

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL LINDER,) Case No. 14-CV-03861 SC
)
Plaintiff,) ORDER GRANTING LEAVE TO
) FILE UNTIMELY OPPOSITION
v.) BRIEF AND GRANTING MOTION
) TO DISMISS
GOLDEN GATE BRIDGE, HIGHWAY &)
TRANSPORTATION DISTRICT, a Special)
District; LISA LOCATI individually)
and as Bridge Captain of the)
District, and DOES 1 to 10,)
Defendants.)

I. INTRODUCTION

Now before the Court are two intertwined motions in this case alleging constitutional, employment, and tort claims against Defendants the Golden Gate Bridge, Highway & Transportation District ("the District") and Bridge Captain Lisa Locati (collectively, "Defendants") stemming from the termination of Plaintiff Paul Linder's employment with the District. First, Defendants moved to dismiss Linder's complaint, ECF No. 1 ("Compl." or "Complaint") for failure to state a claim. ECF No. 9 ("MTD"). Plaintiff's counsel ("Counsel") missed the deadline to file an

1 opposition to that motion, ECF No. 19 ("Cert. of Non-Opp'n"), and
2 as a result, moved for leave to file an untimely opposition brief,
3 arguing that his neglect in missing the deadline was excusable.
4 ECF No. 21 ("Timing Mot."). Pursuant to a Court-ordered briefing
5 schedule, ECF No. 30, both motions are fully briefed,¹ and
6 appropriate for resolution without oral argument under Civil Local
7 Rule 7-1(b). For the reasons set forth below, leave to file the
8 untimely opposition brief is GRANTED. Defendants' motion to
9 dismiss is GRANTED.

10 11 **II. BACKGROUND**

12 Linder was employed by the District in various roles for 21
13 years. At the relevant times he served as a Bridge Lieutenant, and
14 from 2004 to 2012 he was also the Assistant Rangemaster and (later)
15 Rangemaster. As Assistant Rangemaster and Rangemaster, he was
16 responsible for firearms training and certification for District
17 employees. In January or February of 2012, for reasons not
18 specified in the Complaint, Bridge Captain Locati removed Linder
19 from the role of Rangemaster.

20 Several months later, Locati told Linder he would be
21 interviewed by an outside investigator who was looking into
22 complaints concerning the District's compliance with regulations
23 governing weapons permitting and licensing. That interview and
24 subsequent investigation by the California Bureau of Security and
25 Investigative Services ("the Bureau") and California Department of
26 Justice ("CDOJ") concluded that the District paid a retired former

27 ¹ ECF Nos. 26 ("Timing Opp'n"); 31 ("Opp'n"); 32 ("Timing Reply");
28 33 ("Reply").

1 employee to sign off on District firearms certifications without
2 knowledge of whether the individuals in question were actually
3 qualified for certification. Over the course of that
4 investigation, Linder also revealed that Locati misrepresented the
5 retired former employee's date of retirement to conceal that the
6 District lacked an active Rangemaster (as is apparently required)
7 from March 2003 until 2004. This and other information provided by
8 Linder was the "central cause" of the Bureau's decision to revoke
9 permits allowing the District to qualify and re-qualify its
10 personnel to carry firearms. ECF No. 1 ("Compl.") at ¶ 23. As a
11 result of the revocation of the District's permits, the District
12 was required to use private range services to comply with firearm
13 regulations.

14 The District sought to terminate Linder's employment on two
15 occasions. First, on July 9, 2012, Linder was given a letter of
16 intent to terminate his employment based on his submission of two
17 allegedly incorrect dates on documents submitted to the Bureau.
18 After that meeting, Linder was escorted from the premises and told
19 not to return, and he continued on unpaid leave until September
20 2012, when his termination was overturned. His termination was
21 overturned after his counsel submitted proof that Linder had, in
22 fact, followed the District's policies and procedures in submitting
23 documents to the Bureau. Nonetheless, his return was mired by
24 incidents of allegedly retaliatory conduct by Locati, who assigned
25 him to an unprecedented and undesirable schedule, excessively
26 scrutinized his conduct, and placed unique conditions on his
27 return. Linder filed a grievance complaining about this alleged
28 conduct, however the District's human resources department rejected

1 the grievance and refused Linder's parallel request for an
2 investigation of allegations of wrongdoing leveled by Locati.

3 Linder was finally terminated in February 2014. Several
4 months prior to his actual termination, in October 2013, Linder
5 reported a security issue to Locati. Two months later, Locati
6 ordered Linder undergo a "fitness for duty"² examination. Despite
7 being cleared to return to duty, Linder was placed on
8 administrative leave, and in late December 2013, Locati "initiated
9 an Intent to Terminate memorandum"³ for Linder, citing various
10 alleged instances of Linder's failure to perform certain job
11 duties. On February 19, 2014, Linder was terminated. In
12 terminating Linder, the District cited four issues: (1) an incident
13 with an individual who attempted to climb a cable on the Golden
14 Gate Bridge, (2) a written warning regarding a complaint from the
15 California Highway Patrol about Linder's response to a car
16 accident, (3) Linder's response to a potential suicide, and (4)
17 Linder's allegedly aggressive behavior toward a trespassing jogger.
18 Id. at ¶ 47.

19 Subsequently, Linder filed this suit alleging five claims
20 against Locati and the District: (1) retaliation in violation of
21 California Labor Code Section 1102.5(b), (2) violations of Linder's

22 ² This term and other apparent terms of art like "Brady hearing,"
23 or "Bridge Lieutenant" are not always clearly defined either in the
24 Complaint or the parties' briefs. Obviously the Court can surmise
25 the meaning of some of these terms based on context (although the
26 Court shares Defendants' confusion about the references to Brady,
see Mot. at 16 n.2). However, in the future the parties should
explain terms like these unless their meanings are truly clear from
context or are well known.

27 ³ Again, this term is not defined. Given that this is a case about
28 the termination of Linder's employment, the details of how
employment decisions are made at the District are highly relevant
and should be included in an amended complaint.

1 First, Fifth, and Fourteenth Amendment rights under 42 U.S.C.
2 Section 1983, (3) violation of the Bane Act, California Civil Code
3 Section 52.1, and (4) intentional infliction of emotional distress.

4 When the case was filed it was initially assigned to
5 Magistrate Judge Westmore. While Linder consented to magistrate
6 judge jurisdiction, ECF No. 7, Defendants did not file a consent or
7 declination to magistrate judge jurisdiction until after filing
8 their motion to dismiss. ECF No. 12 ("Notice"). As a result, the
9 motion to dismiss was noticed before Judge Westmore with the
10 opposition brief due on October 28, 2014. ECF No. 13. After the
11 case was reassigned to the undersigned, notices were issued
12 informing the parties that the hearing dates were vacated, and
13 motions should be re-noticed before the undersigned. ECF Nos. 14-
14 15. Nevertheless, as the order reassigning the case, ECF No. 15,
15 stated, "[b]riefing schedules . . . remain[ed] unchanged." Id. at
16 1 (citing Civ. L.R. 7-7(d)). While the docket entry re-noticing
17 the motion to dismiss stated the correct deadline, October 28,
18 2014, Counsel did not file a responsive brief on that day.
19 Instead, on November 5, 2014, Defendants filed a certification of
20 no opposition. Cert. of Non-Opp'n at 1-2. Realizing his mistake,
21 Counsel filed a motion to retroactively extend the opposition
22 deadline, arguing that his failure to respond on the appropriate
23 date was due to the innocent miscalculation of deadlines based on
24 the date of the renoticed motion, and the absence of an associate
25 due to a death in the family. In Counsel's view, this explanation,
26 coupled with other relevant facts, renders his neglect in failing
27 to timely respond to Defendants' motion excusable. Defendants
28 oppose the request for leave to file the untimely brief, and argue

the Complaint should be dismissed either for Counsel's failure to file a timely response or on the merits of the motion to dismiss.

III. LEGAL STANDARDS

A. Leave to File Untimely Brief

The Court has discretion to retroactively extend deadlines under Federal Rules of Civil Procedure 6(b) and 60(b)(1) provided that a party shows its neglect in missing the deadline was excusable. In determining whether the parties have shown excusable neglect, the Court considers four factors (the "Pioneer factors"): (1) the danger of prejudice to the nonmoving parties, (2) the length of delay, (3) the reason for the delay, and (4) whether the movant acted in good faith. See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993); Silber v. Mabon, 18 F.3d 1449, 1455 (9th Cir. 1994).

B. Rule 12(b)(6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the

elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a complaint must be both "sufficiently detailed to give fair notice to the opposing party of the nature of the claim so that the party may effectively defend against it" and "sufficiently plausible" such that "it is not unfair to require the opposing party to be subjected to the expense of discovery." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

IV. DISCUSSION

Determining whether to grant Linder's counsel's request for an extension of the opposition deadline is a threshold question. In other words, if the Court finds that Linder's counsel's neglect in missing the applicable deadline was inexcusable, then dismissal may be appropriate. See Tabi v. Pasadena Area Cmty. Coll. Dist., 510 F. App'x 524, 525 (9th Cir. 2013). As a result, the Court addresses that issue first. Because the Court finds Counsel's neglect in missing the opposition deadline was excusable, the Court then turns to the merits of Defendants' motion to dismiss.

A. Motion for Enlargement of Time

Counsel points to two causes for the delay in filing an opposition brief: (1) confusion stemming from the reassignment of the case from Judge Westmore to the undersigned, and (2) the absence of an associate assigned to this case due to a death in the family. Coupling these explanations with the apparent lack of prejudice to Defendants, Counsel's undisputed good faith, and the short length of the delay at issue, Counsel argues his neglect in

1 failing to file a timely opposition is excusable.

2 Defendants disagree with several of these points, but dedicate
3 a significant amount of their opposition to various procedural
4 issues with the motion to extend time. Specifically, Defendants
5 argue that because Counsel filed his motion under Civil Local Rule
6 7-2 (not Rule 6-3, which governs motions to change time), and did
7 not submit a declaration setting forth the reasons for the
8 enlargement of time, efforts to stipulate, harm or prejudice that
9 will result, discloses previous time modifications, and describes
10 the effects on the case management schedule as required Rule 6-
11 3(a), the motion should be denied. True, the undersigned has
12 previously denied motions for failure to comply with aspects of
13 Local Rule 6-3, including the declaration requirement. See e.g.,
14 Wilson v. Frito-Lay N. Am., Inc., No. 12-1586 SC, 2015 WL 846546,
15 at *2 (N.D. Cal. Feb. 25, 2015); McCreary v. Celera Corp., No. 11-
16 1618 SC, 2011 WL 1399263, at *2 (N.D. Cal. Apr. 13, 2011).
17 However, in each of those cases, the procedural deficiencies left
18 the Court without sufficient facts to decide the motion. After
19 all, that is the purpose of the declaration requirement in Civil
20 Local Rule 6-3 -- ensuring the Court has sufficient facts to
21 address the merits of requests to enlarge time. Here, unlike cases
22 denying motions to change time for failing to comply with Local
23 Rule 6-3, the Court finds that even if Counsel's motion is
24 procedurally defective, it still provides sufficient facts to
25 assess the merits of the motion. As a result, denying the motion
26 for procedural deficiencies under these circumstances would elevate
27 form over substance. Thus the Court will construe the motion as
28 proper under the rules and consider the merits of Plaintiff's

1 request.

2 The Court finds that the Pioneer factors weigh in favor of
3 granting leave to file the untimely opposition brief. First, while
4 Defendants complain they were prejudiced by having to respond to
5 Counsel's motion, and some (relatively minor) delay did occur in
6 the period of uncertainty over how to proceed with briefing these
7 motions, any prejudice here was insubstantial. On the contrary,
8 granting leave to file an opposition brief under these
9 circumstances would do little more than deny Defendants "a quick
10 but unmerited victory, the loss of which we do not consider
11 prejudicial." Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253,
12 1262 (9th Cir. 2010). Second, while Defendants argue the length of
13 delay was "unknown," the relevant period of delay is the eight days
14 between the opposition deadline and Counsel's motion. This is a
15 fairly minor delay. Cf. Bateman v. U.S. Postal Serv., 231 F.3d
16 1220, 1225 (9th Cir. 2000) (finding neglect was excusable despite a
17 month delay). Third, while a calendaring mistake is a "weak
18 justification for an attorney's delay," contrary to Defendants'
19 assertions, Timing Opp'n at 5, even calendaring mistakes are
20 compatible with findings of excusable neglect. See Ahanchian, 624
21 F.3d at 1262; see also Pincay v. Andrews, 389 F.3d 853, 860 (9th
22 Cir. 2004) (finding excusable neglect despite the failure to
23 correctly apply a clear local rule); Bateman, 231 F.3d at 1225
24 (concluding the excusable neglect standard was satisfied despite a
25 month-long delay during which an attorney was recovering from jet
26 lag and reviewing mail). Finally, Counsel's good faith is
27 undisputed.

28 As a result, the Court finds that Counsel's neglect in failing

1 to file a timely opposition was excusable. Therefore, the motion
2 for leave to file the untimely opposition to Defendants' motion to
3 dismiss is GRANTED. In the future, however, Counsel is advised to
4 carefully review and follow the Local Rules, as the Court may
5 strike portions of future filings that fail to comply or impose
6 other appropriate sanctions.

7 **B. Motion to Dismiss**

8 Linder alleges four types of claims: (1) First, Fifth, and
9 Fourteenth Amendment claims under 42 U.S.C. Section 1983, (2)
10 whistleblower retaliation contrary to California Labor Code Section
11 1102.5(b), (3) violation of the Bane Act, California Civil Code
12 Section 52.1, and (4) intentional infliction of emotional distress.
13 The Court will address each of these claims in turn.

14 **1. Section 1983 Claims**

15 To state a claim under Section 1983, Linder must show that "an
16 individual acting under the color of state law deprived him of a
17 right, privilege, or immunity protected by the United States
18 Constitution or federal law." Levine v. City of Alameda, 525 F.3d
19 903, 905 (9th Cir. 2008) (citing Lopez v. Dep't of Health Servs.,
20 939 F.2d 881, 883 (9th Cir. 1991)). Linder alleges that both Locati
21 and the District, acting under color of state law, deprived him of
22 his Fifth and Fourteenth Amendment due process rights and his First
23 Amendment free speech rights. As Defendants point out, the Fifth
24 Amendment claims are meritless, because the Fifth Amendment applies
25 only to federal actors, not state or local government actors like
26 Locati or the District. See Lee v. City of L.A., 250 F.3d 668, 687
27 (9th Cir. 2001). Accordingly, to the extent Linder alleges Fifth
28 Amendment claims against Locati or the District, such claims are

1 DISMISSED. Further, because amendment would be futile as to those
2 claims, the dismissal is WITH PREJUDICE.

3 Linder's claims under the Due Process Clause of the Fourteenth
4 Amendment merit more attention. Due process claims are analyzed in
5 two steps. See Walls v. Cent. Contra Costa Transit Auth., 653 F.3d
6 963, 967-68 (9th Cir. 2011). First, the Court must determine
7 whether Linder had a property interest in continued employment.
8 See id. at 968. Second, and only if the Court determines that
9 Linder did, in fact, have a "property interest" in continued
10 employment does the Court determine whether Linder received all the
11 process he was due. See id. State law defines the property
12 interests subject to federal due process protections. See Brady v.
13 Gebbie, 859 F.2d 1543, 1547-48 (9th Cir. 1988).

14 Linder has not adequately alleged a property interest in
15 continued employment. Under California law, public employees that
16 are employed at-will do not have property interests in continued
17 employment. See Binkley v. Long Beach, 16 Cal. App. 4th 1795, 1808
18 (Cal. Ct. App. 1993); see also Kaye v. Bd. of Trs. of the San Diego
19 Cnty. Law Library, No. 07-cv-921 WQH (WMc), 2008 U.S. Dist. LEXIS
20 45604, at *12 (S.D. Cal. June 10, 2008). As Defendants point out,
21 the District's enabling legislation provides for "employ[ment] and
22 discharge at pleasure [of] all subordinate officers, employees and
23 assistants." Cal. Sts. & Hwy. Code § 27151. The phrase "at
24 pleasure" "means one is an at-will employee who can be fired
25 without cause." Hill v. City of Long Beach, 33 Cal. App. 4th 1684,
26 1694 (Cal. Ct. App. 1996) (citing Bogacki v. Bd. of Supervisors, 5
27 Cal. 3d 771, 783 (Cal. 1971)). As a result, unless Linder can
28 allege facts that, contrary to this statutory language, he is not

1 an employee at will, he cannot state a claim for violations of due
2 process in terminating his employment under Section 1983.

3 Linder's rejoinders -- (1) that the District should be
4 judicially estopped from arguing he is an employee at will based on
5 another case in this district, Alarid v. Golden Gate Bridge Highway
6 & Transportation District, No. 3:08-cv-2845-WHA (N.D. Cal.) Dkt.
7 Nos. 48, 58, at 21:21-22, and (2) human resources policies provide
8 for termination only for cause -- are either misguided or have not
9 been pleaded. As Defendants point out, Alarid does not support
10 Linder's judicial estoppel argument because it involved allegations
11 by a bridge patrol officer, a unionized District employee with
12 additional protections and process that Linder, as a non-unionized
13 bridge lieutenant, was not entitled to.⁴ Thus, Linder cannot show
14 that the District has taken inconsistent positions in these two
15 cases, an essential element for invoking judicial estoppel. See
16 Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778, 782 (9th Cir.
17 2001). Finally, in Linder's opposition brief (not his Complaint),
18 he argues that a memorandum of understanding between the District
19 and a union and human resources policies contradict the statute,
20 and provide for termination only for cause. While this argument
21 may be meritorious, it is not pleaded in Linder's Complaint, and
22 thus the Court need not address it. See Bruton v. Gerber Prods.
23 Co., 961 F. Supp. 2d 1062, 1078 (N.D. Cal. 2013) ("[I]n determining
24 the propriety of a Rule 12(b)(6) dismissal, a court may not look

25 ⁴ Defendants filed a request for judicial notice, ECF No. 34,
26 attaching a declaration filed in Alarid and an unpublished
27 California Superior Court decision. Because these documents are
28 "not subject to reasonable dispute," and "can be accurately and
readily determined from sources whose accuracy cannot reasonably be
questioned," Federal Rule of Evidence 201(b), the request is
GRANTED and the Court takes judicial notice of these documents.

beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition to a motion to dismiss."); see also McGraw v. City of Huntington Beach, 882 F.2d 384, 389 (9th Cir. 1989) (citing Skelly v. State Personnel Bd., 15 Cal. 3d 194, 207 (1975)) (concluding that under California law, "a public employee . . . who can establish the existence of rules and understandings, promulgated and fostered by state officials, that justify her legitimate claim to continued employment absent sufficient cause, has a property interest in such continued employment within the purview of the due process clause.").

Accordingly, Linder's Fourteenth Amendment claims are DISMISSED. The dismissal is WITHOUT PREJUDICE, and leave to amend is GRANTED to cure the deficiencies set forth above.

Next, Linder alleges that his termination violated his First Amendment rights. "It is well settled that the state may not abuse its position as employer to stifle 'the First Amendment rights its employees would otherwise enjoy as citizens to comment on matters of public interest.'" Dahlia v. Rodriguez, 735 F.3d 1060, 1066 (9th Cir. 2013) (quoting Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009)) (internal alteration omitted). In First Amendment cases involving public employees, the Court must seek "a balance between the interests of the [employee], as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968). This balancing test has been refined into five steps querying:

(1) whether the plaintiff spoke on a matter of

public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng, 552 F.3d at 1070. Failure to meet any one of these steps is fatal to a plaintiff's case. See Dahlia, 735 F.3d at 1067 n.4.

Defendants do not focus on whether Linder has satisfied these criteria, instead arguing that because they did not intend to inhibit Linder's free speech, his claims must be dismissed. See Mendocino Env't'l Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1300 (9th Cir. 1999). More concretely, Defendants point to Linder's allegations that Locati and the District directed him to speak with investigators as evidence that they lacked intent to chill Linder's speech.

Linder, for his part, does not respond to this argument, instead largely addressing arguments that Defendants did not press in their opening brief, and as a result, the Court need not address the issue. See Stichting Pensioenfonds ABP v. Countrywide Fin. Corp., 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011) (quotation omitted)("[I]n most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue."). At best, Linder's only response to Defendants' argument is (citing the wrong paragraphs of his Complaint) that the Complaint pleads "Defendant [sic] has taken the aforementioned actions against Plaintiff in direct retaliation for, and in response to, the various protected activities of Plaintiff and the

1 prospect of Plaintiff engaging in such activities." Compl. ¶ 68.
2 This allegation is conclusory and unsupported by any facts pleaded
3 in the Complaint. Accordingly, the Court gives this allegation no
4 weight. See Iqbal, 556 U.S. at 679.

5 As a result, Linder's First Amendment retaliation claims are
6 also DISMISSED. Leave to amend is GRANTED to cure the deficiencies
7 identified above.

8 Defendants also contend that Linder failed to sufficiently
9 allege the District's liability under Section 1983. There is no
10 respondeat superior liability for municipalities or local
11 government agencies under Section 1983. See Monell v. Dep't Soc.
12 Servs. of N.Y., 436 U.S. 658, 691 (1978). Instead, a plaintiff
13 seeking to hold a municipality or local government entity liable
14 for its employees' acts must allege "Monell liability," which
15 "attach[es] when an employee is acting pursuant to an expressly
16 adopted official policy, longstanding practice or custom, or as a
17 final policymaker." Thomas v. Cnty. of Riverside, 763 F.3d 1167,
18 1170 (9th Cir. 2014).

19 Linder's exact theory of Monell liability is unclear. While
20 Defendants believe Linder intends to proceed on an improper policy
21 theory, Reply at 7, his Complaint seemingly alleges that Monell
22 liability is proper under either an improper policy or final
23 policymaker theory (with Locati as the final policymaker). See
24 Compl. ¶¶ 10, 68-69. Nevertheless, Linder's claims are
25 inadequately pleaded under either theory. First, Linder does not
26 allege even the existence of an official policy of retaliation
27 against whistleblowers, thus he cannot proceed on a policy theory.
28 See Dugan v. Cnty of Los Angeles, No. 2:11-cv-08145-ODW (SHx), 2012

1 WL 1161638, at *4-5 (C.D. Cal. Apr. 9, 2012) (dismissing a Monell
2 policy claim for failure to allege any facts supporting the
3 existence of the asserted policy); see also AE ex rel. Hernandez v.
4 Cnty. of Tulare, 666 F.3d 631, 636-38 (9th Cir. 2012). Similarly,
5 Linder makes nothing more than conclusory allegations that Locati
6 was a final policymaker or that a final policymaker ratified her
7 actions. See Turner v. City & Cnty. of San Francisco, 892 F. Supp.
8 2d 1188, 1214 (N.D. Cal. 2012). On the contrary, as Defendants
9 point out, California law (which is controlling on the question of
10 whether Locati is a final policymaker) seemingly provides that the
11 District's general manager, not Locati, the Bridge Captain, is the
12 final policymaker. See Cal. Sts. & Hwy. Code § 27151.

13 As a result, Defendants' motion to dismiss Linder's claims
14 under Section 1983 is GRANTED. The dismissal is WITHOUT PREJUDICE,
15 and leave to amend is GRANTED to cure the deficiencies set forth
16 above.

17 **2. Labor Code Section 1102.5(b)**

18 California Labor Code Section 1102.5(b) states that "[a]n
19 employer . . . shall not retaliate against an employee for
20 disclosing information . . . to a government or law enforcement
21 agency . . . if the employee has reasonable cause to believe that
22 the information discloses a violation of state or federal statute,
23 or a violation or noncompliance with a state or federal rule or
24 regulation." To state a claim under this section, Linder must show
25 (1) that he was terminated after reporting a violation of or
26 noncompliance with state or federal law, and (2) a causal
27 connection between the termination and reporting the violation.
28

1 Edgerly v. City of Oakland, 211 Cal. App. 4th 1191, 1199 (Cal. Ct.
2 App. 2012).

3 As Defendants point out, Linder does not identified any
4 federal or state law, rule, or regulation that the District
5 violated in the Complaint. This is insufficient. See Dauth v.
6 Convenience Retailers, LLC, 2013 WL 5340396, at *2 (N.D. Cal. Sept.
7 24, 2013) ("Plaintiff must identify some federal or state law,
8 rule, regulation that was either violated or that Defendants failed
9 to comply with."). As a result, Defendants' motion to dismiss
10 these claims is GRANTED WITHOUT PREJUDICE. Leave to amend is
11 GRANTED to plead the alleged violations set forth in Plaintiff's
12 opposition brief or others.

13 3. Bane Act and Intentional Infliction of Emotional
14 Distress

15 Finally, Defendants move to dismiss Plaintiff's allegations
16 under the Bane Act, California Civil Code Section 52.1, and for
17 intentional infliction of emotional distress. In his opposition,
18 Plaintiff offers to eliminate these claims from his amended
19 complaint to narrow the issues for trial. As a result, the
20 allegations are DISMISSED.

21
22 V. CONCLUSION

23 For the reasons set forth above, Plaintiff's motion to extend
24 the deadline for filing an opposition brief is GRANTED.
25 Defendants' motion to dismiss is GRANTED, and the Complaint is
26 DISMISSED WITHOUT PREJUDICE. Leave to amend is GRANTED to cure the
27 deficiencies set forth in this order. Plaintiff may file an
28 amended complaint within thirty (30) days. Failure to file an

1 amended complaint within the time allotted may result in dismissal
2 with prejudice.

3
4 IT IS SO ORDERED.

5
6 Dated: April 17, 2015


UNITED STATES DISTRICT JUDGE